

The University of Chicago

THE CONSTITUTIONAL AND LEGAL
BASES OF THE PUBLIC SCHOOL
SYSTEM OF PENNSYLVANIA

A PART OF A DISSERTATION SUBMITTED TO
THE FACULTY OF THE DIVISION OF THE
SOCIAL SCIENCES IN CANDIDACY FOR THE
DEGREE OF DOCTOR OF PHILOSOPHY

DEPARTMENT OF EDUCATION

1933

By
JOHN ALFRED NIETZ

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CHAPTER I

INTRODUCTION

Purpose of Study

The purpose of this study has been to trace the history of the educational policy of the State of Pennsylvania as that policy has found expression in constitutional and statutory law. An attempt has been made to discover the origin and trace the evolution of the more important phases of the existing public school system in Pennsylvania, such as, the types of schools established, the kinds and classes of school districts created, the control and support of schools, regulations of the school term, the curriculum requirements, attendance regulations, and matters pertaining to teachers. No attempt has been made to present a complete history of the development of education in Pennsylvania. The study is limited to the constitutional and legal bases.

Justification for the Study

Other documentary studies have been made relating to the development of particular phases of the public school system of Pennsylvania or to particular periods of such development, but none presents a general whole view. One of the most comprehensive of these studies was the one by James P. Wickersham, published in 1886.¹ Although this book refers to laws and constitutions from time to time, it is not a treatment primarily of the legal and

¹A History of Education in Pennsylvania. Lancaster: Inquirer Publishing Co., 1886. Pp. xxi + 683.

constitutional foundations of education in Pennsylvania. It is a general history of education of Pennsylvania up to 1885. A book written by Louise G. and Matthew J. Walsh, published in 1930,¹ is also a general history of education in Pennsylvania. It is less exhaustive and thorough than Wickersham's treatise, but brings the history of education of Pennsylvania up to date. T. H. Schutte made a study of the educational legislation enacted in Pennsylvania from 1775 to 1850.² Since the present system of public schools was barely well-established by 1850, Schutte's study presents but a very partial picture of the legal evolution of the system. On the other hand, to have begun the present study at 1850 would have cut off the very beginning, an understanding of which is essential to get a whole view of the legal bases of the system.

A study was made at the University of Pittsburgh dealing with the development of state support of education in Pennsylvania,³ and another at New York University, dealing with the development of the administration of schools in Pennsylvania.⁴ While both of these studies are largely legal in nature, they deal only with particular phases of the development of the public school system. Had the treatment of these phases been omitted from the present study, the evolutionary picture would have been incomplete.

¹History and Organization of Education in Pennsylvania. Indiana, Pa.: R. S. Grosse Print Shop, 1930. Pp. xvi + 412.

²"The History of Educational Legislation in Pennsylvania from 1775 to 1850." Unpublished Doctor's Thesis, University of Chicago, 1923.

³Claude Mitchell, "The Development of State Support of Education in Pennsylvania." Unpublished Doctor's Thesis, University of Pittsburgh, 1931.

⁴Charles S. Miller, "The Development of State School Administration in Pennsylvania." Unpublished Doctor's Thesis, New York University, 1931.

Sources

The sources of material have been largely the charters and constitutions of the state and the proceedings of their adopting conventions; the laws of Pennsylvania from 1682 to the present time, together with the School Code; the reports of the various courts of the state; the annual reports of the state superintendents of common schools, and of the superintendents of public instruction; the issues of the Pennsylvania School Journal from 1852 to the present time, which was for many years the official organ of the state department of education and later of the state education association; and numerous other reports and documents containing data pertaining to the evolution of the public school system of Pennsylvania.

Method of Procedure

The documentary or historical method has been followed in the prosecution of this study. An examination was made of all laws relating to education enacted from 1682 to the present. These were listed by years, including the page reference, the title, and sometimes a brief annotation of the content. The speeches and debates, committee reports, and motions relating to education were read in the reports of the constitutional conventions. Then with the aid of the School Code, a tentative outline was made, that is, tentative chapter headings were set up. The laws were next classified under these chapter headings chronologically. Similarly, all the Pennsylvania court cases reported in the American Digest were classified according to their nature under the proper chapter headings. The laws, constitutional provisions, and court decisions thus classified constituted the raw data for organizing the headings and

sub-headings within the respective chapters. The headings and sub-headings were dictated by the nature of the data, not superimposed upon the data.

During the process of the writing, in order to avoid a mere encyclopedic presentation of the laws and court decisions, extensive reference work was resorted to. This was done to discover possible causes for the enactment of the respective laws, and to recognize and evaluate certain consequences. It was here that use was made of Hasse's Index of Economic Material in State Documents--Pennsylvania, the annual reports of the state department of education, the Pennsylvania School Journal, and other numerous sources. It was aimed to make use of all pertinent data which would aid in interpreting the evolution and development of the legal provisions for education in the state.

CHAPTER II
CHARTER AND CONSTITUTIONAL PROVISIONS FOR
EDUCATION IN PENNSYLVANIA

William Penn's Frame of Government

The first provision for education in Pennsylvania was made in William Penn's Frame of Government which was signed in England, April 25, 1682. This document contained the following provision relating to education:

I, the said William Penn, have declared . . . XII. That the Governor and provincial council, shall erect and order all public schools, and encourage and reward the authors of useful sciences and laudable inventions in the said province.¹

Provision was made for the division of the provincial council into committees better to administer the affairs of the colony. Among the committees was "a committee of manners, education and arts, that all wicked and scandalous living may be prevented, and that youth may be successfully trained up in virtue and useful knowledge and arts."²

It is clear that Penn contemplated the establishment of a public school system for the new commonwealth. Before coming to America, in the latter part of 1682, Penn prepared certain laws which were agreed upon in England. Among these laws, one provided for laying the foundation of a system of industrial education. It provided:

¹ Conventions of Pennsylvania, 1776 and 1790, edited by Francis Shunk, p. 22. Harrisburg: John S. Wiestling, 1825.

² Ibid., p. 22.

All children within this province, of the age of twelve years, shall be taught some useful trade or skill, to the end that none may be idle, but the poor may work to live, and the rich, if they become poor, may not want.¹

This provision for education was enacted by the first general assembly of the colony, which met at Chester in December, 1682. The second assembly, which met in Philadelphia in March, 1683, enacted even more stringent provisions. They were, in part, as follows:

All persons . . . having children . . . shall cause such to be instructed in reading and writing, so that they may be able to read the scriptures and to write by the time they attain twelve years of age; and . . . in case parents shall be found deficient in this respect, every such parent . . . shall pay for every such child, five pounds, except there should appear an incapacity in body or understanding to hinder it.²

Penn was unable, however, to carry out his educational policies, even though the records of the early courts reveal that, at least in some instances, fines were duly imposed for violation of the foregoing act. Unfortunately, the liberal educational ideas of Penn and a few of his immediate followers were not shared by those who succeeded them in the administration of the affairs of the colony. Little provision was made for education from Penn's time to the beginning of the War of Independence.

Wickersham discusses the possible causes for the decline of interest in education in that period. His discussion may be summarized as follows:

1. The double-headed rule of the Proprietary and the Crown of England was inharmonious. It was difficult, and at times impossible, for Penn to get his advanced ideas approved by the

¹Ibid., p. 29.

²Charter to William Penn and Laws of the Province of Pennsylvania, p. 142. Harrisburg: Lane S. Hart, State Printer, 1879.

Crown. No doubt, this inharmonious relation ultimately affected Penn's liberal educational ideas adversely.

2. Penn's proprietary form of government, which was feudal in nature, could not be reconciled with his principles of democracy.

3. The growing heterogeneous population of the colony made the administration of a public school system, such as Penn envisaged, impractical and nearly impossible. The population soon consisted of Swedes, Dutch, English, Scotch, Welsh, Irish, and Germans in great numbers.

4. The varied and conflicting religious opinions held by such heterogeneous groups complicated the educational problem greatly. Friends, Lutherans, Calvinists, Baptists, Catholics, Mennonites, Dunkers, Amish, and Reformed Germans all were in Pennsylvania. Tolerance had not progressed to a point where parents of one faith would send their children to a school taught by a teacher of another faith. As long as such religious intolerance existed, no system of public education was possible.

5. The rich natural resources of Pennsylvania, together with the thriftiness of its population, tended to make the people of Pennsylvania prosperous. Apparently, this condition resulted without the assistance of an organized system of schools. Unquestionably, this early limited prosperity led many people, particularly the rural people, to believe that academic education had little or nothing to do with material success. This left education to be considered a religious matter, and consequently, a matter of church concern. A system of parochial schools in Pennsylvania was the result.¹

¹Wickersham, op. cit., pp. 54 ff.

These five factors indicate why the early idealistic and liberal educational ideas of William Penn and his immediate followers failed to dominate the future of Pennsylvania's educational endeavors. Next, consideration will be given to the provisions for education in the Constitution of 1776.

Constitution of 1776

The Continental Congress, on May 15, 1776, passed a resolution suggesting to the several colonies that such governments be set up as would best secure the happiness and safety of their constituents. As a consequence, deputies were elected in Pennsylvania to frame a government. They met in constitutional convention on July 15, 1776, in Philadelphia, and unanimously chose Benjamin Franklin as president. The labors of the convention were completed on September 28, 1776. However, the constitution which was drafted was never submitted to the people for ratification, evidently because of the uncertainty of the future engendered by the Revolution. Nevertheless, it seemed to serve all the purposes of a duly ratified constitution until the adoption of another constitution in 1790.

The deputies seem to have re-caught the educational vision of William Penn, for they wrote into that constitution significant provisions for education. The section which related to education read as follows:

Section 44. A school or schools shall be established in each county by the legislature, for the convenient instruction of youth, with such salaries to the masters paid by the public, as may enable them to instruct youth at low prices; and all useful learning shall be duly encouraged and promoted in one or more universities.¹

It is clear that this section provided for three things:

- (1) Schools should be established to provide instruction;

¹Constitutions of Pennsylvania, p. 238. Harrisburg: William S. Ray, State Printer, 1916.

(2) the existing civil district, namely, the county, should be recognized as the unit in which a school or schools should be established; and (3) useful learning should be promoted through one or more universities. A public school system to be supported by the public was clearly contemplated. It is unlikely, however, that the framers of the constitution had in mind schools entirely free. As might be expected, during the period of the Revolution, the general assembly was really unable to carry out the provisions of this section. Consequently, nothing was done for education except in relation to the College, Academy and Charitable School of Philadelphia. Its charter was abrogated, and in its place the University of Pennsylvania was chartered.

The failure of the general assembly to provide educational facilities for the masses did not mean that the importance of education was forgotten. Section 47 of the Constitution of 1776 provided for the election of a Council of Censors, to be composed of two persons from each city and county of the state, whose duty it was "to enquire whether the constitution has been preserved inviolate." An entry in the minutes of this council under date of June 28, 1779, in defending the action of the Assembly in appointing or permitting the appointment of new trustees for the College, Academy and Charitable School of the City of Philadelphia, read as follows:

The education of youth has been always considered by the greatest philosophers and lawgivers as the most certain source of the tranquility and happiness both of private families and of states and empires. Youth are as of the nursery of the state, and from among them magistrates, ministers, and all persons placed in authority and influence are taken; and it is evident that the good education of those who are one day to fill those places, will have a powerful effect on the whole body of the state, and stamp the spirit and general character of the whole nation . . . The spirit and character of a

republic is very different from that of a monarchy, and can be imbibed by education.¹

Seeing the need for the education of the "youth," and wishing that this need might be satisfied, did not overcome the practical difficulties of providing a public school system in that day. After the close of the Revolution and the adoption of the Federal Constitution of 1787, Pennsylvania next proceeded to call a new constitutional convention in 1790.

Constitution of 1790

The article on education which was adopted by the Constitutional Convention of 1790 took the following form:

Article VII, Section 1. The legislature shall, as soon as conveniently may be, provide by law for the establishment of schools throughout the state, in such a manner that the poor may be taught gratis.

Article VII, Section 2. The arts and sciences shall be promoted in one or more Seminaries of learning.²

It is evident that the provisions for education in this constitution were less liberal than those of the Constitution of 1776. A comparison of Section 1 of this constitution with the first part of Section 44 of the Constitution of 1776 discloses several differences. The obligation placed upon the legislature to establish schools throughout the State by the word "shall" was practically nullified by the phrase "as soon as conveniently may be." No time limit was set within which the legislature should provide schools. The last phrase of the section was even more harmful to free public schools, for the expression, "that the poor may be taught gratis," was often interpreted as a provision for

¹ Conventions of Pennsylvania, op. cit., p. 121.

² Constitutions of Pennsylvania, op. cit., p. 194.

the establishment of charity schools for Pennsylvania. The latter scheme was not new, for it was the prevailing one in England.

Several days of debate preceded the adoption of the foregoing provisions. The deliberations regarding education began with a proposal by McKean that the provisions for education in the Constitution of 1776 be so modified as to provide for the teaching of the poor gratis. Pickering, a native of Massachusetts where public schools were common, then proposed the following article in lieu of the one submitted by McKean:

Knowledge generally diffused among the people being essential to the preservation of their rights, it shall be the duty of the legislature to provide for the instruction of children and youth by the establishment of such schools in the several counties throughout the commonwealth. And the arts and sciences and all useful learning shall be further promoted in one or more universities.¹

This proposal was negatived. Wilson then moved the following provision:

Section 1. A school or schools shall be established in each county for the instruction of youth, and the state shall pay to the masters such salaries as shall enable them to teach at low prices.

Section 2. The arts and sciences shall be promoted in one or more seminaries of learning.²

While this proposal dealt with the establishment of schools, it did not require the legislature to establish them. Evidently, some members of the convention feared that in case the legislature should attempt to establish schools by law, such legislation might be declared unconstitutional. To avoid such danger, Pickering came forward with another proposal as follows:

Section 1. The legislature shall provide, by law, for the establishment of schools throughout the state, in such manner that the poor may be taught gratis.³

¹Conventions of Pennsylvania, op. cit., p. 368

²Ibid., p. 241.

³Ibid., p. 244.

McLane moved to insert after the word "legislature," "as soon as conveniently may be." Pickering's proposal, as amended by McLane, was adopted as Section 1. Wilson's Section 2 was adopted.¹

It is clear that the provisions for education which were finally adopted were accepted only after several compromises. The first one related to the source of authority for the establishment of schools. It was decided that the legislature should exercise such authority. The second compromise dealt with the time and obligation of establishing schools. The word "shall" was retained, but its force was weakened by the phrase, "as soon as conveniently may be." The third issue involved the principle of free universal education. Here the English idea of providing free education for the poor prevailed. However, the legislature was not forbidden to provide free public education for all in case it cared to do so.

The various assemblies of the legislature were apparently influenced by the phrase "as soon as conveniently may be," for the first legislation relating to education was delayed until 1802, and this provided for the education of the poor only. It was not until 1824 that provision was made for free public schools. In turn, this law was repealed before it went into effect. Finally, in 1834, another act was passed which remained in effect, giving each school district in the state the right to provide free schools.

Constitution of 1837

The members of the Constitutional Convention of 1837-38 were sufficiently interested in proposals for education to introduce at least forty-eight amendments and make 226 speeches or remarks covering sixteen days. The development of the attitude of

¹Ibid., p. 245.

the convention toward educational matters is well reviewed in a concluding speech delivered near the end of the convention by Cline as follows:

I hailed the report of the committee . . . as an earnest of the highminded and enlightened liberality which I thought would have manifested itself by an almost unanimous vote of the members of the convention, and for some time after the subject came up for discussion in committee of the whole, I congratulated myself that I was not disappointed. But when at last I was called to witness the unaccountable but certain transition of the human mind from enthusiasm to indifference and afterwards from indifference to open and avowed opposition, I felt the reaction on my spirits like the weight of an Atlas. I was chilled and mortified.¹

The final result was that the educational sections of the Constitution of 1790 were not changed even a single word. The attitude in regard to drafting liberal provisions for public education changed from early enthusiasm to indifference and later to avowed opposition. A study of the debates of the convention reveals that these changes of attitude were due to the following factors and influences:

1. Conflict between those favoring the English language only in schools and those favoring the use of German in communities where it was preferred.

2. Opposition to the universal establishment of public schools by denominational and parochial school interests.

3. Persistence of the idea that only the poor should be taught gratis.

4. Disagreement as to the purpose or end of education. Was its chief purpose to enable one to read the Bible, to make one a better citizen, or to make one more efficient?

5. Fear of increased taxation. A public school system universally free to all children would inevitably increase taxes.

¹
Debates of Pennsylvania Convention of 1837-38, reported by John Agg, XIV, 76. Harrisburg: Packer, Barrett, and Parke, 1839.

Constitution of 1873

Great changes had taken place in public opinion in favor of public education between the Convention of 1837 and that of 1872. A comparative study of the debates vividly reveals these changes. Several issues which evoked serious debate in 1837, such as the German language question, were not even raised in 1872. Provisions which were not even considered in 1837, such as women holding school offices, were adopted in 1872. In summary, the following educational provisions were adopted:

1. The legislature should provide for the maintenance and support of a universal public school system. This replaced the charity school idea contained in the Constitution of 1837.

2. The legislature should appropriate annually at least one million dollars for the support of public schools.

3. No money raised for the support of public schools should be used for the support of sectarian schools.

4. The governor should appoint, with the consent of two-thirds of the senate, a superintendent of public instruction for a term of four years.

5. Women should be eligible to hold any office under the school laws of the state.

6. No special legislation should be passed pertaining to the regulation of affairs of school districts, to the creation of offices in school districts, and to the management of public schools.

The following proposals were made and debated in the convention but were not adopted:

1. The legislature should provide for the establishment of industrial, mining, and agricultural schools in needed centers.

2. Time limits should be placed upon the frequency in

the change of textbooks.

3. The arts and sciences should be encouraged in one or more seminaries of learning.

4. The legislature might by law require that every child of sufficient mental and physical ability attend the public schools, unless educated by other means.

5. There should be a state board of education which should appoint county superintendents and have supervision of public instruction subject to such regulations as might be prescribed by law.

Scope of the Constitutional Provisions in Pennsylvania

An examination of Table I shows that the constitutional conventions of Pennsylvania never assumed the functions of the legislature in adopting detailed provisions relating to education as has been true in many other states, especially in the West and South.¹ No Pennsylvania constitution has provided for a state board of education, although nineteen of the forty-eight states have made such provision sometime between 1776 and 1929.² Only the last of the four Pennsylvania constitutions made any provision for a state school officer. It provided for the appointment of a state superintendent of public instruction by the governor with the consent of two-thirds of the senate for a term of four years. However, the Pennsylvania constitution is silent on the subject of salary, which is prescribed by constitutional provision in fifty per cent of the other states, and on the qualifications,

¹ John M. Matzen, State Constitutional Provisions for Education, pp. 140 ff. New York: Bureau of Publications, Teachers College, Columbia University, 1931, No. 462.

² Ibid., p. 140.

which are prescribed in twenty-two states.¹ Although nineteen states have made constitutional provisions for a chief county school officer, none of the constitutions of Pennsylvania has made such provision.² Forty-one states have made constitutional provision for the creation of permanent common school funds, and forty-two for state distributive common school funds, yet no Pennsylvania constitution has made provision for either.³

These comparisons indicate that the members of the constitutional conventions of Pennsylvania have distinguished between policies which are fundamental and permanent and those which ought to be subject to needed change. It was evidently recognized that constitutional stipulations and prescriptions of detailed administrative machinery relating to education and the schools obstruct the way of educational progress. In the course of the debates of the constitutional conventions, different members on occasions remarked that they were not making a code of laws. Statutory laws can readily be changed, while constitutional provisions cannot. Matters of educational policy as well as of administrative machinery, except those of the most fundamental sort, should be subject to ready revision with the new developments in the field of education.

¹Ibid., p. 142.

²Ibid., p. 143.

³Ibid., p. 142.

CHAPTER III

TYPES OF SCHOOLS AND EDUCATION PROVIDED BY LAW

Evolution of the Free Public School

The free public school of Pennsylvania as it exists today evolved through the following stages:

1. The provincial council as provided for in Penn's Frame of Government arranged for some early schools in Philadelphia which were open to the public but not free.

2. The colonial assemblies enacted certain laws which enabled church societies to raise money for and establish schools. These laws tended to encourage the parochial type of education in Pennsylvania.

3. The Constitution of 1776 provided for the establishment of schools throughout the state, but because of the unsettled conditions of the period these provisions were never fulfilled.

4. The Constitution of 1790 provided for the establishment of schools "in such manner that the poor may be taught gratis." This led to the enactment of so-called "Poor Laws." These laws provided for free education of the poor only. These laws failed to satisfy the real educational needs of the state. Only a small fraction of the children of the state received even the rudiments of learning.

5. The Law of 1834 established a state system of education. Generally speaking, it made of each civil district a school district. Then each school district could decide for itself whether it would establish and maintain public schools. It was not until 1873 that all districts provided public schools.

6. Lastly, the Constitution of 1873 made it compulsory to provide a universal state public school system.

Evolution of Legal Provision for Secondary
Education in Pennsylvania

The secondary schools of Pennsylvania have evolved through four rather clearly defined stages.

1. The early policy was to charter academies sponsored by private, voluntary, or sectarian initiative. At first no state aid was given. Later, the state granted some aid either in the form of land grants or money appropriations. Beginning in 1838, the state granted annual appropriations to academies. This policy was discontinued after six years. Nearly universally the aid given by the state was conditioned upon the teaching of a certain number of poor children gratis. The early academies were for boys only. Beginning in 1838, many academies and seminaries for girls were chartered by the state.

2. The second stage constituted the period of transition from the academy to the public high school. The earliest high schools were established through special legislation, the first one having been authorized for Philadelphia in 1836. An act of 1849 enabling school directors to establish schools for individuals from five to twenty-one years indicated that higher or secondary education could be provided as an integral part of the common school system. An examination of official reports regarding education revealed that from that date until the late 1880's a struggle was waged between the proponents of public high schools and those of the academies. This struggle resulted in limiting the development of both types of secondary education.

3. The third stage constituted the period of the more or less universal establishment of public high schools. This period

began in 1887 when legal provision was made for all cities and boroughs divided into wards to establish high schools. In 1893, this right was extended to all boroughs having a population of 5,000 or more, and in 1895 to all school districts in the state. In 1903, legal provision was made for a pupil living in a school district not maintaining a high school to attend one in some other district and have his tuition paid by his own district. Thus, the opportunity to obtain a free high school education was extended to every child in the state.

4. The development of the junior high school represents the last stage. This institution was legalized in 1921, and since that time its development has been very rapid in Pennsylvania.

Development of Colleges and Universities in Pennsylvania

Higher education in Pennsylvania evolved through the following stages:

1. The earliest colleges and universities were founded either under independent or under sectarian auspices. They were chartered by the state but in the beginning were given no state aid. Later, the state granted most of them limited subsidies either in the form of land or money, or both. Several of the earliest institutions began as academies and later developed into colleges.

2. In 1838, the legislature provided for annual state subsidies to all colleges maintaining certain standards. These subsidies were to continue for ten years. However, the legislature of 1843 repealed these provisions, and since then no stated annual subsidies have been provided.

3. Following the withdrawal of state aid in 1843, the colleges underwent a period of difficulty. Some were compelled to close their doors, while most of the others had small

enrollments. The Constitution of 1873 forbade state aid to sectarian colleges and required a vote of a two-thirds majority of the members of both houses to grant aid to any institution which is not under state control.

4. A number of miscellaneous developments characterized the fourth stage. One was the consolidation of colleges which encountered difficulty in attracting respectable enrollments when located too near each other. Another was the establishment of female colleges after 1850. In 1871, 1895, 1921, and 1927, the legislatures enacted various regulative provisions concerning colleges and universities, which clearly showed the development of a policy in the state to control the standards of institutions even though they are not actually state institutions.

5. The last stage represents the re-inauguration of state aid to certain institutions. These consist of two kinds: certain non-sectarian universities which are not actually state institutions; and next, those which are state institutions or nominally so. Pennsylvania State College and the State Teachers Colleges constitute the latter type.

CHAPTER IV
EVOLUTION OF THE LOCAL UNIT OF SCHOOL ADMINISTRATION
IN PENNSYLVANIA

The first stage in the evolution of the school district in Pennsylvania was the obligation placed upon certain officials of the civil units of government to carry out the provisions for the education of the poor as provided for in the acts of 1802, 1804, and 1809. Next, the city and county of Philadelphia in 1818, and the county of Lancaster in 1822, were created as the first and second school districts of Pennsylvania, respectively. Thus, the first school districts, as such, were created by special legislation. The first general provision to divide all the state into school districts was enacted in 1834. This law provided that every ward, township and borough should form a school district.

In 1837, the legislature began to create special or independent school districts by special legislation. This continued until 1855, when all existing independent districts were abolished, and provision was made for the formation of new independent districts with the approval of the courts of common pleas. In 1854, the city ward as a unit for a school district was abolished and the city made the unit. No further significant changes were made until 1911, when the "incorporated town," and 1921, when the "union school district," were added as school district units. The Code of 1911 further classified the six kinds of districts into first, second, third, and fourth class school districts, according to their population. The power of the legislature to classify school districts according to their population was up-

held in the courts.

The school district of Pennsylvania has repeatedly been defined by the courts as a quasi corporation, existing as the special agency to carry out the educational purposes of the state. It has been further held that a school district, even though co-terminous with a municipality proper, is not subject to the control or limitations of such municipality in taxation or borrowing capacity.

CHAPTER V

LEGAL BASIS OF PUBLIC SCHOOL SUPPORT

Early Means of Support

Pennsylvania has employed various means of encouraging and supporting education and schools. As early as 1786, the state set aside 60,000 acres of land to endow public schools, although no record has been found to show how this grant was administered. Later lotteries were legalized to build and support schools. In 1802, a law was enacted to provide for the free education of the children of the poor. Secondary and higher education were encouraged by various state grants of land and subsidies. Exempting by state law various kinds of educational institutions from taxation was another way of financial aid to education.

Creation of Common School Fund

The common school fund of Pennsylvania was created by legal enactment in 1831. It was largely created from the receipts of the monies due on the unpatented lands, and from a general tax of one mill per dollar. The early aim was to let this fund grow until it would produce an annual interest of \$100,000. However, it was drawn upon before such time. In fact, in the later 1830's, the practice was begun of paying the state appropriations to schools partly out of the state school fund and partly by special levies by the legislature. Rarely was the entire legislative appropriation actually expended. This was true because the exact number of accepting school districts could not be accurately predetermined, and only the accepting school districts could receive

state aid. The percentage of state aid of the total expenditures for schools in the state varied greatly from time to time. In the 1830's and 1840's the percentage was large, reaching 62.6% in 1841. In the 1850's, 1860's, and 1870's, it was small, being only 6.3% in 1871. In the 1890's it was high, reaching 47.8% in 1896. Since 1900, it has again been small, hovering below 20% most of the time.

Bases of Distribution of State Aid

The first state appropriation to schools, which was made for the year 1835, was distributed on the basis of the number of taxables of the different accepting school districts. This basis of distribution held until 1897, when new bases were established. The new law provided that one-third be distributed on the basis of the number of paid teachers regularly employed, one-third on the number of children between six and sixteen years of age, and one-third on the number of taxables. The bases were again changed in 1911, when one-half was to be distributed on the basis of the number of regularly employed teachers and one-half on the number of children between six and sixteen years residing in the several school districts. In 1919, the principle of providing a graduated scale of state aid to help pay teachers' salaries was initiated. The law of 1919 and subsequent laws based the graduated aid upon several factors: Class of school district, kinds of certificates held by the teachers, and assessable property per teacher. The law of 1919 and subsequent laws also provided for part payment of the salaries of special teachers and workers by the state, such as school nurses, extension class teachers, and teachers of special classes for defectives. Other recent laws have provided state aid for such matters as consolidated schools, pupil transportation, the rebuilding of destroyed school buildings, and the construction

of school buildings in weak fourth class districts.

Evolution of Local School Support

The earliest form of local taxation for the support of education was for the education of the children of the poor. The next step was to create the special school districts of Philadelphia and Lancaster and to grant them the permission to levy taxes for the establishment and maintenance of schools. The first general provision for taxation for public schools was enacted in 1834, when all districts accepting the conditions of the law were given the privilege to levy a local tax for schools. The amount so raised was to be at least twice the amount to be received from the state. In 1836 a poll tax was permitted. These laws were revised in minor ways several times, until they were materially changed in 1849. That law required that the amount of tax levied be sufficient to operate the schools at least four months, that a poll tax of at least fifty cents be levied, and that the district treasurer be the school tax collector. In 1854, boards of directors were empowered to appoint school tax collectors. Also, boards were empowered to levy a special tax, not exceeding the amount of the regular annual tax for such year, to be applied solely to purchase grounds and build schools thereon. An act of 1897 substituted a per capita tax of one dollar for school purposes on each male inhabitant over twenty-one years in lieu of the occupational poll tax of 1849. The Code of 1911 changed many of the school tax regulations. First, it provided that there should be only one levy in each district for school purposes. The further details relating to school taxation varied in the four different classes of school districts. These have been amended only in minor ways since 1911.

Taxing Limitations

The first limitation to be placed upon the amount to be raised for school purposes was enacted in 1835. The act limited school taxes to an amount "not exceeding one and a half times the amount assessed on the same (property) for county purposes." The next year this was changed to "not less than equal to, nor more than treble the amount which the district is entitled to receive out of the annual state appropriation." In 1854, the taxes were limited to an amount "not exceeding the amount of state and county taxes authorized by law . . ." The same law permitted a special levy for purchasing school grounds and erecting school buildings. The Code of 1911 set up varying limitations on tax levies for the four classes of school districts of the state. Such classified limitations still obtain.

Debt Limitations

In 1854 school directors were authorized to borrow money to purchase grounds and erect school houses and to issue bonds therefore, providing that the total indebtedness incurred should not exceed one-half of one per cent of the assessed valuation of property of the district. In 1871, boards were empowered to borrow an amount not exceeding five per cent of the valuation, with the consent of the majority of the electors of the district and of the court of common pleas of the county. The Constitution of 1873 provided that the total indebtedness of a school district should "never exceed seven per centum upon the assessed value of the taxable property therein," and no new debt should be incurred exceeding two per cent of the valuation without the consent of the electors.

The Code of 1911 provided for incurring temporary debts under certain conditions. These conditions varied in the four

different classes of school districts. An act of 1927 required that school districts obtain the approval of the Department of Internal Affairs before increasing or incurring indebtedness.

CHAPTER VI

CONTROL AND SUPERVISION OF EDUCATION IN PENNSYLVANIA

Beginnings

The first control of all colonial governmental matters, including education, was in the hands of the proprietary governor and provincial council. They created, in 1697, a corporation by the title of "Overseers of the Schools." This body had control of several schools in and around Philadelphia for many years.

The first provision for education made by Pennsylvania as a state rather than as a colony was the enactment of laws for the education of the children of the poor. The first law was passed in 1802, which was amended in 1804 and again in 1809. The administration of these laws was placed in the hands of civil officers such as overseers of the poor, supervisors of highways, assessors, and the county commissioners and treasurers.

Next, special legislation was provided for the control of education in Philadelphia and Lancaster. In the former, the body which had control of the schools was known as the board of controllers in 1818 and in the latter, as school directors in 1822.

State Supervision

Until 1834, all state records relating to education were collected and kept by the secretary of the commonwealth. By the law of 1834, the secretary of the commonwealth was also ex-officio designated as the superintendent of common schools. In 1857, these two offices were officially separated, and provision was made for the appointment by the governor of a "superintendent of

common schools." By the constitution of 1873-74 the title was changed to "superintendent of public instruction."

The School Code of 1911 provided for the appointment of a state board of education. In 1921, the state board was discontinued and a state council of education was created in its place.

Local Supervision

Local supervision of a professional character was first provided for in 1854, when a law was enacted requiring the election of a county superintendent of schools in each county. This office gradually evolved into one of influence educationally. In 1867, provision was made for cities and boroughs having over 10,000 population to elect their own superintendents of schools. The same privilege was extended to cities and boroughs having over 7,000 population in 1871 and over 5,000 in 1881. In 1885, the same right was given townships with 5,000 population. The code of 1911 provided that school districts of the first, second, and third class, could elect their own superintendents and be exempted from county supervision.

Boards of School Directors

The law of 1834 made out of every "ward, township, and borough" a school district. Each school district should elect six school directors whose duty it was to establish and maintain schools in the district for all children who chose to attend, providing the district "accepted" to have schools. With amendments, this provision remained in effect until the Constitution of 1873-74 made it compulsory to establish and maintain schools in every district of the state. In 1905, provision was made that upon petition of the council of any city, the court of common pleas could increase the number of directors to three from each

ward. The Code of 1911 divided the school districts of the state into classes and provided for a different number of directors for each class. In districts of the first class, the courts of common pleas should appoint a board of fifteen directors, each to serve six years. In the other three classes of districts, the directors should be elected by the people for terms of six years. Districts of the second class should elect nine directors, the third class, seven directors, and the fourth class five.

CHAPTER VII

THE SCHOOL TERM AND THE CURRICULUM

School Term and Month

The law of 1834, which first provided for a public school system in Pennsylvania, did not specify either a minimum or a maximum number of months to constitute a school year. A law of 1836 specified a school term of six months, providing there were funds for the purpose. The last clause virtually nullified the term specification. In 1849, a term of not less than four, nor more than six months was specified. The four-month minimum was considered too long, so it was reduced to a three-month minimum in 1850, but again increased to four months by the law of 1854. In 1872, it was increased to five months in all districts except in those already levying the maximum amount of tax permitted by law, and in 1887, it was raised to six months under like conditions, and similarly to seven months in 1899.

The next change was contained in the School Code of 1911. It classified school districts into four classes according to their population, and then required different lengths of terms for the different classes of districts. The minimum terms required were nine months in districts of the first and second classes, eight months in the third class, and seven months in the fourth class. A law of 1921 required a minimum term of 180 school days in districts of the first, second, and third classes, and 160 days in districts of the fourth class.

The first provision regulating the school month was enacted in 1865, which specified twenty-two days as a school month.

However, it empowered the board of directors to appropriate two of these days to the attendance at teachers' institutes. A law of 1885 specified a school month of twenty days. It also prohibited keeping school open on Saturdays or legal holidays. The Code of 1911 added Sunday to the prohibited list. It also specified that no day should count as a school day unless actual teaching be done. At present, therefore, the school term is calculated by the actual number of days that teaching is done.

Textbooks and Curriculum

Even before Pennsylvania had established a general public school system various resolutions were presented in legislative assemblies attempting to induce them either to purchase or adopt for purchase certain books to be used in the then existing schools. However, on no occasion was action taken.

The law of 1834, establishing the public school system of Pennsylvania, failed to specify anything directly regarding textbooks or curriculum. The failure of the law to specify the subjects to be taught led to much confusion according to a report of State Superintendent Burrowes in 1837. Superintendent Burrowes urged legislative action, but none was then taken.

In 1849, school directors were specifically empowered to determine the branches to be taught and the texts to be used. The law of 1854 contained several sections pertaining to these matters. One provided that the texts be decided at a joint meeting of the school directors and the teachers. The other required that orthography, reading, writing, English grammar, geography, and arithmetic should be taught, as well as such other branches as the directors might require. In 1867, a law was enacted empowering the triennial directors' convention of each county to agree upon a series of textbooks to recommend for adoption to the directors

of the several school districts of such county. This provision was omitted from the Code of 1911.

From time to time other subjects were added to the required list. Physiology and hygiene, including special reference to the effects of alcohol and narcotics, was added in 1885. Also, after 1885, cities of the second class were required to teach mechanic arts. In 1895, cities of the second class, and in 1901, boroughs and townships were empowered to teach mechanic arts. After 1901, physical culture was required, and after 1905, humane education. Several of these were added, no doubt, as a result of certain outside demands rather than to satisfy the demands of educators themselves.

The School Code of 1911 codified not only the various laws relating to the curriculum but also incorporated into law many of the best existing practices. It greatly increased the list of required subjects and named many others which boards might require. Among the new required subjects were spelling, history of the United States and Pennsylvania, civil government, and fire prevention. By a law of 1913, ten verses of the Bible should be read daily in all public schools. Laws of 1919 required that safety-first methods, physical training, ethics, and a course in state and national loyalty be taught in the public schools. Lastly, in 1923, the teaching of the Constitution of the United States was added.

Several special days have been designated by law, in which instruction in special matters should be given. "Bird Day" was required after 1915, "Frances Willard Day" after 1919, and "Pennsylvania Charter Day" after 1927.

Pennsylvania was very slow in specifying what should be taught in the public schools. Apparently, the wishes of educators

as to what subjects should be required were provided for in the School Codes of 1854 and 1911. However, since 1885 several subjects and matters have been required to be taught by law largely through the influence of certain outside forces and groups.

CHAPTER VIII
LEGAL STATUS OF THE PUPIL

Legal Provisions Relating to School Attendance

The first law enacted in Pennsylvania relating to school attendance merely made free attendance permissible for the children of the poor at some existing nearby parochial or private school. In 1818, Philadelphia, and in 1822, Lancaster, were empowered to erect and furnish free public schools for the children of the poor. The law of 1834 empowered every school district of the state, voting to do so, to provide free public schools "for the education of every child within the limits thereof, who shall apply . . . for admission and instruction." In 1849, the age limits were set between five and twenty-one years. In 1865, the minimum age was raised from five to six years, which limit still holds.

The principle of permissible school attendance held until 1895, despite the strenuous efforts on the part of state superintendents of public instruction and several governors to enact compulsory education legislation sooner. The legislatures of 1891 and 1893 passed such legislation, but in each instance it was vetoed by Governor Pattison. Finally, in 1895, a law was enacted requiring all children between eight and thirteen years living within two miles of a public school to attend some school at least sixteen weeks of each year. A law of 1897 provided that unless usefully employed, children should be required to attend until sixteen. Also, children were required to attend "at least seventy per centum of the time in which schools in their districts shall

be in session." By a law of 1901, only those who were able to read and write English could be excused from school attendance under sixteen, and unless the board of directors reduced the attendance period to seventy per cent, attendance would be required for the entire school term. The Code of 1911 permitted only the school directors of the fourth class districts to reduce the period of attendance to 70% of the school term, and raised the minimum age for leaving school from thirteen to fourteen. The power of directors of fourth class districts to reduce the period of school attendance to 70% of the school term was changed to apply only to children over fourteen years of age after 1925.

It was only comparatively recently that legal provisions were made regulating where children could or should attend school. The compulsory education act of 1895 did "not apply to any child that has been or is being otherwise instructed in the common English branches of learning for a like period of time." Provision was made in 1903 for children finishing the grades of the schools of the district in which they resided to attend public schools of higher grades or courses of study, including high schools in other districts, and have their tuition paid. In 1907, children living more than one and one-half miles from the nearest school in their own district could attend any more convenient school in another district and have their tuition paid. The latter provision continued in effect under the Code of 1911 except where transportation was provided by their own district.

With the enactment of the compulsory education act of 1895, there was also enacted a health law regulating the school attendance of children from homes where a person was suffering from certain named contagious diseases. Also, principals of affected schools were required to refuse admission to any child who

could not present a certificate of vaccination. The latter provision created much confusion and opposition, but it was never repealed. It was upheld in the courts of Pennsylvania. However, various other phases of the health law of 1895 were amended from time to time, but they were never very materially changed as affecting school attendance.

As early as 1849 a law was enacted forbidding minors between thirteen and sixteen years to be employed in certain kinds of factories unless they had "attended school for at least three consecutive months within the same year." The school attendance feature of this law was not materially changed until a law of 1901 required all children to attend school until thirteen, and until sixteen unless regularly employed. In 1907, the minimum employment age was raised to fourteen. The most significant act relating to employment of minors and school attendance was passed in 1915, which provided for continuation education of not less than eight hours each week of all employed minors between the ages of fourteen and sixteen years.

School Census

Despite the urgent efforts of most of the state superintendents to bring about legislation providing for the enumeration of children of school age, no such provision was made until 1895. The compulsory education act required that the assessors make a "correct list of all children between the ages of eight and thirteen years within the district." Such list was to be submitted to the county commissioners and then to the proper principal or teacher. In 1897, the directors were empowered to appoint an enumerator, if they so desired, other than the assessor. Also, all children between six and twenty-one were to be listed. The Code of 1911 required the directors to appoint the enumerator who

was to list all children between six and sixteen. This provision is still in force.

CHAPTER IX
THE LEGAL STATUS OF THE TEACHER

Certification of Teachers

Since most of the early schools of Pennsylvania were parochial, the qualifications of the teachers were determined by the church authorities of the different religious sects. The first legal provision regulating the certification of teachers was contained in the act of 1834, which directed the courts of Quarter Sessions to appoint two school inspectors in each school district who were directed to examine and certify teachers. In 1835, the office of school inspector was abolished, and his duties were transferred to the school directors of the several districts. In 1840, school directors were empowered to associate with themselves someone to examine and certify teachers. By an act of 1849 directors were empowered to appoint outside persons to do so alone. Beginning in 1854, county superintendents were directed to grant certificates to those qualified to teach. After 1867 county or city superintendents were empowered to grant provisional and professional certificates, and the state superintendent was empowered to grant permanent certificates. After 1893 permanent certificates could be granted to graduates of four-year colleges after having taught successfully for three years. The Code of 1911 limited the number of times provisional and professional certificates could be renewed. It also added several new kinds of state certificates. In 1921, the power to regulate the conditions governing the issuance of certificates was largely placed under the control of the newly created council of education, and

the power of the county superintendent to grant certificates was repealed, except for emergency purposes.

Teachers' Contracts

The law of 1834 directs school directors "to appoint capable teachers at liberal salaries." A law of 1836 empowered directors to divide school districts into sub-districts and permit a committee of three men of the sub-district to appoint the teacher. In 1849, the power to appoint teachers was again placed solely in the school directors. The courts held that a contract made with a teacher by the president and the secretary alone could not be enforced, for a contract was legal only when made by a vote of the directors. The Code of 1911 specified eighteen years of age as the minimum for a teacher; empowered boards to employ teachers of merit holding state permanent certificates for any length of time not exceeding three years; specified that all teacher contracts in districts of the second, third, and fourth class, should be in writing; and forbade the employment of a teacher related to any member of an employing board except by the affirmative votes of three-fourths of all the members of such board. A law of 1929 definitely specified the form and contents of a teacher's contract. This form provided for a deduction from the teacher's salary of a contribution to the Teachers' Retirement Fund, for a "continuing contract," and for the subjection of the teacher to her superintendent of schools.

Dismissal of Teachers

The first legal provision pertaining to the dismissal of teachers was enacted in 1849, which empowered directors to "dismiss them at any time for incompetency, cruelty, negligence, or immorality." These causes for dismissal have been upheld in the

courts, providing the directors had proceeded properly. A court held that a teacher might be dismissed for refusal to be vaccinated. After 1895, wearing a religious garb while on duty teaching a public school was a cause for dismissal. By the Code of 1911, no teacher or principal could be dismissed without the presentation of written charges, and a hearing.

Teachers' Salaries

The law of 1834 directed boards to "appoint capable teachers at liberal salaries." A law of 1836 directed boards to "fix the amount of the salaries of the teachers." These provisions were not changed until 1903, when a minimum salary law was enacted. According to the annual reports of the state superintendents, the average monthly salaries of male teachers varied from about \$17 in the 1840's to nearly \$50 in 1903. The average of female teachers varied from a little over \$10 to \$35. The law of 1903 made \$35 per month the minimum salary for every teacher in the state. The minimum was raised to \$40 in 1907. In 1917, \$45 per month was made the minimum, with higher minimums for teachers holding better certificates. Two years later \$60 became the absolute minimum, and \$70 and \$80 for holders of better certificates. The Edmonds Act of 1921 made \$100 per month the minimum for elementary teachers in fourth class districts, and \$1,000 per year in third and second class districts, and \$1,200 in first class districts. Also, regular increments were required by the same law.

Teachers' Retirement Provisions

The first retirement system provisions of Pennsylvania were made in 1907, and only for the second and third class cities. It merely empowered the boards of these cities to establish and

administer a teachers' retirement fund. The Code of 1911 empowered the boards of all school districts to do so. Finally, in 1917, a universal compulsory state teachers' retirement system was established, which with only minor revisions is in force today.

CHAPTER X

CONCLUSIONS

Constitutional Provisions

1. The members of the four constitutional conventions of Pennsylvania recognized what many consider the true purposes of a constitution. Apparently, in writing the constitutions distinction was made between policies which are fundamental and more or less permanent and those which ought to be subject to ready change. It was recognized that constitutional stipulations of detailed administrative machinery relating to education and the schools obstruct educational progress. These matters should be provided for by law, not by constitution. Statutory law can readily be changed; constitutional provisions cannot.

2. The Constitution of 1873 allowed the legislature less discretion in fiscal than in other affairs. Herein, an exception to the constitutional policy of Pennsylvania was followed.

Statutory Provisions

1. It has been the general policy of the legislature of Pennsylvania to refrain from regulating by statutory enactment details of an administrative nature which properly should be left to the discretion of administrative officers. This was particularly true until the 1890's. Beginning in the 1890's and culminating in the adoption of the Code of 1911, the legislature enacted many rather prescriptive laws. Since 1921 there has been a tendency to grant the state council of education or the superintendent of public instruction more authority in prescribing

many details in educational matters. Particular reference to several of these matters may serve to clarify these statements.

The legal status of the teacher was almost wholly determined by the local boards of school directors in the beginning, due to the non-prescriptive character of the early laws. The statutes soon began to some extent to stipulate regulations pertaining to the certification of teachers. Statutory law next prescribed certain legal causes for the dismissal of teachers. Only in recent years have the statutes prescribed the form of teachers' contracts, the minimum salary of teachers (never the maximum), and the provisions for a teachers' retirement fund. The purpose of these recent provisions is not so much to interfere with the authority of the proper school officers as to guarantee certain minimum standards and rights involving the teacher.

The legislature has generally prescribed the minimum length of the school term of the different school districts of the state but never the maximum. Boards of education have always been granted the exercise of discretion in determining the length of the school term beyond the minimum.

The legislature has seemed reluctant to prescribe the school curriculum. For many years not even the rudimentary subjects were prescribed by law. Gradually the laws became more prescriptive in this matter. The Code of 1911 possibly was too prescriptive, for some of its curriculum provisions have since been repealed. Beyond the prescription of certain rudimentary subjects, educational authorities usually question the practice of statutory prescription of the school curriculum.

Legislation pertaining to fiscal matters has been more prescriptive than regarding other matters. The levying of certain minimum taxes has been made mandatory upon boards of school

directors in order to guarantee a free education to the children of the state. On the other hand, maximum limits of taxation and indebtedness have been enacted and upheld by the courts in order to protect the rights of the tax-payer against unreasonable levies by an unscrupulous exercise by school directors of their tax levying power.

2. The policy governing the granting and distributing of state aid to education evolved through several stages. The early policy was not to maintain a state system of public education. Some subsidies were given to non-state secondary schools and colleges, presumably to guarantee trained leaders for the state. Then during the period of Jacksonian democracy the state established a public school system and granted regular aid to all schools established thereunder. Soon thereafter, the state subsidies to the non-state secondary schools and colleges were discontinued. In reality this meant that the state aided only elementary education during the second stage. During the present stage (which began in the 1880's) regular aid is given to all public schools, including public high schools and state teachers' colleges, and to certain non-sectarian universities. Presumably, state aid is granted to public schools to guarantee the birth-right of every child to receive a free general education, and to higher education to train professional leaders for the state.

The policy governing the distribution of the state aid to the different school districts has changed from one based upon the number of taxables to one based upon a composite number of elements, including the number of children (not only those in school) between certain ages, and finally to one based largely upon the graduated needs of the districts.

The share of the total support of the public schools borne

by the state, usually not large, varied by periods. Two principles seemed to govern the varied practice. Whenever legislation was enacted involving an increase in expenditure for schools, the state usually increased its amount of aid in order to help the local districts bear such expenditure. Too, the amount of state aid was usually increased during financial panics, no doubt, to prevent the lowering of educational standards when local taxpayers were least able to maintain them.

3. The public schools of Pennsylvania have been maintained most largely from local support under statutory authorization. From the beginning the statutes fixed the minimum levies, or the maximum, or both. As soon as statutory provisions empowered local school districts to incur indebtedness--usually for the purchase of school grounds or the erection of school buildings--such provisions also limited the amount of indebtedness. Local boards of school directors were permitted less discretion in fiscal than in other matters. On the one hand such limitations have prevented much financial extravagance, and on the other, have caused inequalities in the educational opportunities for the children in many school districts.

4. The school districts of Pennsylvania have always been fiscally independent. Local school districts are co-existent merely for administrative purposes, not fiscally dependent upon local political divisions. They levy local taxes and incur indebtedness independently of coincident political divisions. They have been created to be agencies of the state for a special purpose; namely, to train the next generation of citizens. This constitutes an exercise of the state's inherent right to self-preservation and improvement.

5. The control of the schools by the different school

officers of Pennsylvania evolved through several stages. From 1834 to 1854 the schools were largely locally controlled under state authority. The provisions of the laws pertaining to education were very general, allowing boards of school directors much discretion in establishing and administering schools, except in fiscal affairs. The state superintendent of common schools, then an ex-officio officer, was given little authority other than the collection of data for the annual reports from the different school districts and the distribution of the state aid to the reporting districts.

The period from 1854 to 1911 was one of transition in the control of schools. The county superintendent, whose office was created in 1854, was empowered or assumed the power to perform many duties theretofore performed by school directors. When the state superintendency of schools became a separate state office in 1857, the superintendent gradually assumed either supervision or control of many affairs previously under the sole control of local officers. Too, it was during this period that the distinction developed between the duties and functions to be performed by trained persons, such as superintendents of schools, and those to be performed by lay officers, the school directors. During the earlier period school directors performed both types of duties.

The period since 1911 may be characterized as one of greater state centralization of control. The creation of the state board of education--later changed to the state council of education--and the increased powers of the state superintendent of schools, granted largely by the Code of 1911 and the laws of 1921, have tended to transfer many of the powers both of local directors and of district and county superintendents of schools

to the state officers. The state department of education (including the state council of education) now grants the certificates of teachers, prescribes a minimum course of study, regulates the classification of schools, approves the plans of new buildings, controls the distribution of state aid, and performs many other duties of a regulative character too numerous to enumerate. The tendency to centralize the control of educational affairs in state officers was due to an insistence upon curtailing certain abuses arising out of local control, to the inherent limitations of local control, and to the need or demand for more uniform standards.

6. Local superintendents of schools have not been given as much power as is favored by the leading authorities in the field of school administration. They do not have statutory control of school attendance (except the granting of working certificates), the making of the budget, the nomination, dismissal or promotion of teachers, or the planning of buildings. They may assume these powers only when accorded them by the boards of directors.

Decisions of the Courts

1. The decisions of the courts have been rather uniform in establishing and upholding certain fundamental principles affecting educational affairs. The courts have declared that the rights of the children to a free and equal education are foremost; that school officers, state as well as local, serve primarily to guarantee the inherent rights of the children and the preservation of the state, and in so serving, act in the name of the state; that the schools belong to the state and are authorized and established by the state for its own improvement; that the school laws, within constitutional limits, enacted by the legislature are supreme; that the legislature, within constitutional limits, cannot be restrained

from setting up its own form or method of establishing, controlling, and administering the schools of the state; that the limits of taxation and indebtedness, when not fixed by the constitution, can be determined by the legislature; and that the rights of the state over the child supersede those of the parent when the conflict involves laws enacted for the good of the child and the state.

2. The foregoing principles have guided the courts in declaring certain duties of school officers mandatory, others discretionary; and in restraining school officers in some actions, and in refusing to interfere in regard to others.

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